

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

_____	X	
THE NEW YORK TIMES COMPANY,	:	
	:	
Plaintiff,	:	
	:	<u>COMPLAINT</u>
- against -	:	
	:	
U.S. DEPARTMENT OF STATE, U.S. DEPARTMENT	:	
OF JUSTICE, FEDERAL BUREAU OF	:	
INVESTIGATION,	:	
	:	
Defendants.	:	
_____	X	

Plaintiff THE NEW YORK TIMES COMPANY (“The Times”), by its undersigned attorneys, allege as follows:

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), to obtain an order for the production of agency records from the U.S. Department of State (“State Department” or “DOS”), the U.S. Department of Justice (“DOJ”), and the Federal Bureau of Investigation (“FBI”) in response to requests properly made by Plaintiff.

PARTIES

2. Plaintiff The New York Times Company publishes *The New York Times* newspaper and www.nytimes.com. The New York Times Company is headquartered in this judicial district at 620 Eighth Avenue, New York, New York.

3. Defendant U.S. Department of State is an agency of the federal government that has possession and control of the records that Plaintiff seeks.

4. Defendant U.S. Department of Justice is an agency of the federal government that has possession and control of the records that Plaintiff seeks.

5. Defendant Federal Bureau of Investigation is an agency of the federal government that has possession and control of the records that Plaintiff seeks.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

7. Venue is premised on the place of business of Plaintiffs and is proper in this district under 5 U.S.C. § 552(a)(4)(B).

8. Plaintiffs have exhausted all administrative remedies available in regard to the request at issue. *See* U.S.C. § 552(a)(6)(C).

FACTS

9. On May 17, 2019, Mark Walker, on behalf of The Times, submitted two FOIA requests to the State Department seeking:

- i. access to and copies of correspondence sent or received between January 20, 2014 and the date of the request, between any of seven State Department officials (Greg Pfleger; Geoffrey Pyatt; Philip T. Reeker; Eric Rubin; Eric Schulz; Marie Yovanovitch; Elizabeth Zentos) and any of nineteen non-government individuals (Alan Apter; Devon Archer; Barry Bennett; Hunter Biden or Robert Hunter Biden; John D. Buretta; Joseph E. DiGenova; Mark Duffy; David Leiter; Alexander or Sasha Levin; Sally Painter; Lev Parnas; Joan Peugh; Harry Sargeant; Eric Schwerin; John Sweeney; Andrii Telizhenko; Karen A. Tramontano; Yuri Vanetik; Oksana Shulyar) (FOIA tracking number F-2019-06257); and

- ii. access to and copies of correspondence sent or received between January 20, 2014 and the date of request, between any of eight State Department officials (Eric Ciaramella; Jonathan Finer; Eugene Fishel; Stephen Glazer; Amos J. Hochstein; George P. Kent; Michael Kimmage; Victoria Nuland) and any of eighteen non-government individuals (Alan Apter; Devon Archer; Barry Bennett; Hunter Biden or Robert Hunter Biden; John D. Buretta; Joseph E. DiGenova; Mark Duffy; David Leiter; Alexander or Sasha Levin; Sally Painter; Lev Parnas; Joan Peugh; Harry Sargeant; Eric Schwerin; John Sweeney; Andrii Telizhenko; Karen A. Tramontano; Yuri Vanetik (FOIA tracking number F-2019-06255)).

10. On May 21, 2019, Mark Walker, on behalf of The Times, submitted six FOIA requests to the State Department seeking access to and copies of:

- i. correspondence sent or received from August 2016 to the date of the request between, on the one hand Foreign Service Officers and political appointees in the United States Embassy in Romania, and, on the other hand, other United States government officials or certain non-governmental senders or recipients (Hunter Biden or Robert H. Biden; Matthew Britton; Elliott Broidy; Lt. Gen. (Ret.) Mark Bowman; David Jonathan Camel; Vic Constantinescu; Monica Eremia; Louis Freeh; Aryeh Lightstone; Andrew Kowal; Steve Loglisci; Stan Manning or Stanley Richard Manning; Philip F. Reilly; Former Congressman Ed Royce or his staff; Jessica Stephens; Alan Stone or Alan Blaine Stone; Juan C. Zarate), referencing any of certain subjects or keywords (Hunter Biden or Robert Hunter Biden; BCH Development Group; Broidy Capital Management; Lt. Gen. (Ret) Mark Bowman; Elliott Broidy; Circinus or Circinus Defense; Vic Constantinescu;

Monica Eremia; Louis Freeh; Rudy Giuliani or Rudolph W. Giuliani; Steve Loglisci; Aryeh Lightstone; Mar-a-Lago; George Popoviciu; Threat Deterrence; President Trump's inauguration; Xiemen Investments Ltd) (FOIA Tracking Number F-2019-06318);

- ii. correspondence sent or received from August 2016 to the date of the request between, on the one hand, Foreign Service Officers and political appointees in the United States Embassy in the United Arab Emirates, and, on the other hand, other United States government officials or certain non-governmental senders or recipients (Khaled Mohamed Saeed Alkuwaiti; Major General Ahmad Hassan Mohammad Asiri; Matthew Britton; Elliott Broidy; David Jonathan Camel; Andrew Kowal; Stan Manning or Stanley Richard Manning; Fran Moore; George Nader; Haig Melkessetian; Philip F. Reilly; Former Congressman Ed Royce or his staff; Jessica Stephens; Alan Stone or Alan Blaine Stone; Juan C. Zarate), referencing any of certain subjects or keywords (Khaled Mohamed Saeed Alkuwaiti; Major General Ahmad Hassan Mohammad Asiri; BCH Development Group; Broidy Capital Management; Elliott Broidy; Circinus or Circinus Defense; GS Investment Limited; Mar-a-Lago; George Nader; Threat Deterrence; President Trump's inauguration; Xiemen Investments Ltd.) (FOIA Tracking Number F2019-06323);

- iii. correspondence sent or received from August 2016 to the date of the request between, on the one hand, Foreign Service Officers and political appointees in the United States Embassy of the Kingdom of Saudi Arabia, and, on the other hand, other United States government officials or certain non-governmental senders or

recipients (Khaled Mohamed Saeed Alkuwaiti; Major General Ahmad Hassan Mohammad Asiri; Matthew Britton; Elliott Broidy; David Jonathan Camel; Andrew Kowal; Stan Manning or Stanley Richard Manning; Fran Moore; George Nader; Haig Melkessetian; Philip F. Reilly; Former Congressman Ed Royce or his staff; Jessica Stephens; Alan Stone or Alan Blaine Stone; Juan C. Zarate), referencing any of certain subjects or keywords (Khaled Mohamed Saeed Alkuwaiti; Major General Ahmad Hassan Mohammad Asiri; BCH Development Group; Broidy Capital Management; Elliott Broidy; Circinus or Circinus Defense; GS Investment Limited; Mar-a-Lago; George Nader; Threat Deterrence; President Trump's inauguration; Xiemen Investments Ltd.) (FOIA Tracking Number F2019-06321);

- iv. correspondence sent or received between January 20, 2014 and the date of the request between Jonathan Katz of the United States Agency for International Development, and any other senders/recipients, including, but not limited to, certain non-government individuals (Alan Apter; Devon Archer; Barry Bennett; Hunter Biden or Robert Hunter Biden; John D. Buretta; Joseph E. DiGenova; Mark Duffy; David Leiter; Alexander or Sasha Levin; Sally Painter; Lev Parnas; Joan Peugh; Harry Sargeant; Eric Schwerin; John Sweeney; Andrii Telizhenko; Karen A. Tramontano; Yuri Vanetik), related to any of certain subjects or keywords (Burisma Holdings; Esko-Pivnich LLC; First Ukrainian Oil and Gas Company LLC; Infoks LLC; Nadragaz LLC; Pari LLC and/or SystemOilInzhenirynh LLC; Mykola Zlochevsky or Zlochevskyi; Alan Apter; Blue Star Strategies; Sally Painter; Karen A. Tramontano; Devon Archer; Eric

Schwerin; Rosemont Seneca; Hunter Biden or Robert Hunter Biden; John D. Buretta; David Leiter; The Prosecutor General of Ukraine; Anatoliy Danylenko; Nazar Kholodnytskyi; Yuriy Lutsenko; David Sakvarelidze; Viktor Shokin; Vitaly Yarema; The National Anti-Corruption Bureau of Ukraine; Artem Sytnyk; Andrii Telizhenko; Joseph E. DiGenova; Rudy Giuliani; Alexander or Sasha Levin; Barry Bennett; Yuri Vanetik; Lev Parnas; Harry Sargeant) (FOIA Tracking Number F-2019-06325).

11. On May 23, 2019, May 24, 2019 and on May 28, 2019, DOS acknowledged receipt of The Times' May 17, 2019 and May 21, 2019 requests (FOIA Tracking Numbers: F-2019-06257, F-2019-06255, F-2019-06258, F-2019-06260, F-2019-06261, F-2019-06323, F-2019-06321, F-2019-06312, F-2019-06325), granted The Times' request for a fee waiver as to each request, and denied The Times' request for expedited processing as to each request. DOS further stated that the requests were deemed "complex," and that, based on "the need to search in offices that are separate from the office processing your request" and "the need to conduct consultations with other offices and agencies," the requests fall within "unusual circumstances" as defined in FOIA and would require additional time to process.

12. On May 20, 2019, Mark Walker, on behalf of The Times, submitted three FOIA requests to DOJ requesting:

- i. access to and copies of correspondence sent or received between January 20, 2014 and the date of the request, between Michael E. Horowitz of DOJ's Office of Inspector General and any other sender or recipient, related to any of certain subjects or keywords (Alan Apter; Devon Archer; Barry Bennett; Hunter Biden or Robert Hunter Biden; John D. Buretta; Joseph E. DiGenova; Mark Duffy; David

Leiter; Alexander or Sasha Levin; Sally Painter; Lev Parnas; Joan Peugh; Harry Sargeant; Eric Schwerin; John Sweeney; Andrii Telizhenko; Karen A.

Tramontano; Yuri Vanetik; Oksana Shulyar) (FOIA Control Number: 19-OIG-253);

- ii. access to and copies of correspondence sent or received between January 20, 2014 and the date of the request, between Michael E. Horowitz of DOJ's Office of Inspector General and any other sender or recipient, related to any of certain subjects or keywords (John D. Buretta; David Leiter; The Prosecutor General of Ukraine; Anatoliy Danylenko; Nazar Kholodnytskyi; Yuriy Lutsenko; David Sakvarelidze; Viktor Shakin; Vitaly Yarema; The National Anti-Corruption Bureau of Ukraine; Artem Sytnyk; Andrii Telizhenko; Joseph E. DiGenova; Rudy Giuliani; Alexander Levin or Sasha Levin; Barry Bennett; Yuri Vanetik; Lev Parnas; Harry Sargeant) (FOIA Control Number: 19-OIG-254); and
- iii. access to and copies of correspondence sent or received between January 20, 2014 and the date of the request, between Michael E. Horowitz of DOJ's Office of Inspector General and any other sender or recipient, related to any of certain subjects or keywords (Burisma Holdings; Esko-Pivnich LLC; First Ukrainian Oil and Gas Company LLC; Infoks LLC; Nadragaz LLC; Pari LLC; SystemOillnzhenirynh LLC; Mykola Zlochevsky or Zlochevskyi; Alan Apter; Blue Star Strategies; Sally Painter; Karen A Tramontano; Devon Archer; Eric Schwerin; Rosemont Seneca; Hunter Biden or Robert Hunter Biden) (FOIA Control Number: 19-OIG-255).

13. On May 23, 2019, DOJ acknowledged receipt of The Times' three May 20, 2019 FOIA requests and denied The Times' requests for expedition as to each request.

14. On May 20, 2019, Mark Walker, on behalf of The Times, submitted a FOIA request to the FBI requesting access to and copies of correspondence sent or received between January 20, 2014 and the date of the request between either of two FBI officials (Karen Greenaway; Raymond Hulser) and any of certain senders or recipients (Alan Apter; Devon Archer; Barry Bennett; Hunter Biden or Robert Hunter Biden; John D. Buretta; Joseph E. DiGenova; Mark Duffy; David Leiter; Alexander or Sasha Levin; Sally Painter; Lev Parnas; Joan Peugh; Harry Sargeant; Eric Schwerin; John Sweeney; Andrii Telizhenko; Karen A> Tramontano; Yuri Vanetik; Oksana Shulyar).

15. Also on May 20, 2019, the FBI sent an automated acknowledgment of The Times' FOIA request.

COUNT I (AGAINST ALL DEFENDANTS)

16. Plaintiff repeats, realleges, and reincorporates the allegations in the foregoing paragraphs as though fully set forth herein.

17. DOS is an agency subject to FOIA and must therefore release in response to a FOIA request any disclosable records in its possession at the time of the request and provide a lawful reason for withholding any other materials as to which it is claiming an exemption.

18. DOJ is an agency subject to FOIA and must therefore release in response to a FOIA request any disclosable records in its possession at the time of the request and provide a lawful reason for withholding any other materials as to which it is claiming an exemption.

19. The FBI is an agency subject to FOIA and must therefore release in response to a FOIA request any disclosable records in its possession at the time of the request and provide a lawful reason for withholding any other materials as to which it is claiming an exemption.

20. Plaintiff has exhausted all administrative remedies under FOIA as to the requests enumerated above, because DOS, DOJ, and the FBI failed to make a determination in regard to the requests within 20 business days.

21. Accordingly, Plaintiff is entitled to an order compelling DOS, DOJ, and the FBI to produce records responsive to the requests.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

22. Declare that the documents sought by the requests, as described in the foregoing paragraphs, are public under 5 U.S.C. § 552 and must be disclosed;

23. Order DOS to undertake an adequate search for the requested records and provide those records to Plaintiff within 20 business days of the Court's order;

24. Order DOJ to undertake an adequate search for the requested records and provide those records to Plaintiff within 20 business days of the Court's order;

25. Order the FBI to undertake an adequate search for the requested records and provide those records to Plaintiff within 20 business days of the Court's order;

26. Award Plaintiff the costs of this proceeding, including reasonable attorney's fees, as expressly permitted by FOIA; and

27. Grant Plaintiff such other and further relief as this Court deems just and proper.

Dated: New York, New York
October 11, 2019

/s/ David E. McCraw

David E. McCraw

Dana R. Green

Alexandra Perloff-Giles

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